

Corning Incorporated
Corning, New York 14831
607-974-9000
fax 607-974-6135

Legal Department

147545

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

CORNING

May 1, 1996

Mr. Philip M. Moilanen
Bullen, Moilanen, Klaasen & Swan
402 South Brown Street
Jackson, Michigan 49203

Re: Albion-Sheridan Township Landfill

Dear Mr. Moilanen:

We have not heard from you or your client since your letter of March 1, 1996. In that letter you imply that Cooper Industries, Inc. and Corning Incorporated have excluded Decker from participating in the management of this project, and further state that Decker "stands ready to participate...." However, as you will recall, our conference call of February 13, 1996, concluded with your decision not to participate with Cooper and Corning on an interim allocation in this project, and your commitment to make some offer other than that proposed by Cooper and Corning. To date neither Cooper nor Corning has received an offer from Decker.

Despite your allegations of bad faith on the part of Cooper and Corning, I submit that it is Decker that has been operating in less than good faith: as was indicated in the February 23 letter, your client is jointly and severally liable for 100% of the cleanup costs at the Albion-Sheridan Landfill site, and yet Decker has done nothing and paid nothing while other respondents have performed under the Order. Your client is out of compliance with the UAO it received, and is subject to penalties of up to \$25,000 per day since December 11, 1995, if the Department of Justice chooses to enforce EPA's order. You may wish to spend some time reviewing what constitutes a "sufficient cause" defense for failure to comply with a UAO. Your client has neither performed work nor paid for work to be performed nor made any cash offer for either Cooper or Corning to consider. Neither of us is familiar with a case with these facts in which such a party has prevailed in a penalty action.

Mr. Philip M. Moilanen

May 1, 1996

Page 2

Your argument that "there is no law, statutory or otherwise, which requires that the UAO respondents share equally in the cost of compliance" is disingenuous at best. CERCLA provides no methodology for allocation, and there is no language enabling each responsible party to pay only its "fair share," whatever that may be. You may wish to consider the case law and commentary concerning allocation methodologies that have developed since the 1986 amendments to CERCLA. There are a number of equitable factors that can be considered in allocation. Some sites have used a per capita distribution as a final allocation, although neither Cooper nor Corning are advocating that for this site.

The remedial design work plan has been submitted to EPA. The project is moving forward under the direction of the project coordinator selected by the participating parties. Corning and Cooper have signed a participation agreement, which contemplates other parties joining in the work. The participating parties are considering all options available to them to increase the number of participants at this site. We look forward to hearing from you.

Very truly yours,



Andrea Kojm Thomas
Assistant Counsel



Ceil Price (signed by permission)
Cooper Industries
Counsel, Environmental

cc: Mr. J. Gray
Mr. C. Smith
Kurt Lindland, Esq. ✓

akt:mf
moilanen.ltr